

BOARD OF APPEALS CASE NO. 5129	*	BEFORE THE
APPLICANT: Donald & Margaret Lord	*	ZONING HEARING EXAMINER
REQUEST: Variances for an existing townhouse and to construct a deck; 2018 Flagstone Court, Abingdon	*	OF HARFORD COUNTY
	*	Hearing Advertised
		Aegis: 3/21/01 & 3/28/01
HEARING DATE: May 7, 2001	*	Record: 3/23/01 & 3/30/01
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ZONING HEARING EXAMINER'S DECISION

The Applicants, Donald B. Lord and Margaret A. Lord, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, for an existing townhouse within the 40 foot rear yard setback (35 feet existing), and a variance to Section 267-23C(1)(a)(6), to construct a deck within the required 30 foot rear yard setback (25 feet proposed) in an R2/COS District.

The subject parcel is located at 2018 Flagstone Court, Abingdon, Maryland 21009 and is more particularly identified on Tax Map 61, Grid 1C, Parcel 13, Lot 15. The subject parcel consists of a 2000 square foot lot (20 ft. by 100 ft.), is within the Winter's Run Manor subdivision and is presently zoned R2/COS Urban Residential with Conventional Open Space. The parcel is within the First Election District.

Mr. Donald Lord appeared and testified that he and his wife are the owners of the subject parcel. The witness stated that his house was apparently mislocated by the original builder 5 feet further back on the lot than it should have resulting in a permanent encroachment of the townhouse into the rear yard setback. This also results in a decreased rear yard requiring a variance if any addition were to be built. In this case, the Applicants propose a rear deck, 10 feet by 16 feet in size, that will encroach into the rear yard setback 5 additional feet. This deck will tie into an existing 7 feet by 10 feet corner configured deck which is too small for real outdoor use. The witness stated that there are probably five other similarly sized decks in the immediate neighborhood.

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The Applicant did not feel that either variance would have any adverse impact on adjacent, adjoining or neighboring properties. The Applicant indicated that none of his neighbors had voiced any objection to either request. Finally, Mr. Lord indicated that his property was unique in that it was very small and even the minimal misplacement of the hose had created the need for these variances.

There were no protestants who appeared in opposition to the requested variances. The Department of Planning and Zoning, in its Staff Report dated April 25, 2001, indicated that the Department finds the circumstances of this request unique and recommends approval of the requested variances.

CONCLUSION:

Section 267-36B, Table V of the Harford County Code requires a 40 foot rear yard setback for the existing townhouse. Because of a mislocation by the builder, the house was placed 5 feet further back on the lot than it should have been located. The variances requested in this case flow directly from that misplacement.

The Applicants are requesting a variance to the above section of the Code to allow the townhouse to remain where it is presently located. Additionally, the Applicants are requesting a variance to allow a deck to encroach 5 feet (30 feet required, 25 feet proposed) into the rear yard setback pursuant to Code Section 267-23C(1)(a)(6) which provides as follows:

“Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

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Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

The Hearing Examiner finds the circumstances of this lot unique within the zoning sense. The townhouse lots were created with little or no tolerance for errors in structure placement. In this case, and through no fault of the Applicants, the house was misplaced by the builder. It would impose an unreasonable hardship to the Applicants to require the house to be properly located and the Hearing Examiner finds no evidence that would warrant a finding that the house, at its present location, results in any material adverse impact to any neighboring property.


Similarly, the misplacement of the house results in the need for the Applicants to request a variance to construct a deck similar in size, shape and location as many other decks commonly found in townhouse communities throughout Harford County. The Code allows accessory structures such as decks to encroach into setback lines provided the encroachment does not exceed 25% of the required setback and that the structure not be located within an easement area. This proposal will not encroach 25% and no easement is impacted.

The Hearing Examiner, therefore, recommends approval of the variances requested, conditioned upon the Applicants obtaining all necessary permits and inspections.

Date JUNE 4, 2001

**William F. Casey
Zoning Hearing Examiner**

Date JUNE 4, 2001



William F. Casey
Zoning Hearing Examiner